

558716

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

YANCY DAVIS,

Plaintiff,

-vs-

Case: 2:07-cv-12572
Assigned To: Cox, Sean F
Referral Judge: Whalen, R. Steven
Filed: 06-15-2007 At 02:30 PM
CMP DAVIS V SYSTEMS AND SERVICES TE
CH INC (LH)

SYSTEMS AND SERVICES TECHNOLOGIES, INC.

Defendant.

LAW OFFICES OF BRIAN P. PARKER, P.C.

BRIAN P. PARKER (P 48617)

Attorney for Plaintiff

30700 Telegraph Rd., Suite 1580

Bingham Farms, MI 48025

(248) 642-6268

(248) 642-8875 (FAX)

lemonlaw@ameritech.net

WWW.COLLECTIONSTOPPER.COM

COMPLAINT AND DEMAND FOR JURY

Plaintiff, YANCY DAVIS (Plaintiff) by and through counsel, brings this action against the above listed Defendant, SYSTEMS AND SERVICES TECHNOLOGIES, INC., (Defendant) on the grounds and in the amounts set forth herein:

I. PRELIMINARY STATEMENT

The plaintiff brings this action for damages based upon the Defendant's violations of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et seq*, and seeks actual damages, punitive damages, costs and attorney's fees.

II. PARTIES

1.

The plaintiff is a natural person and consumer, a resident of Wayne, Wayne County, Michigan, and a "consumer" as defined by 15 U.S.C. § 1692a(3).

2.

The defendant is a Foreign Corporation located in St. Joseph, State of Missouri.

3.

The defendant is engaged in the collection of debts from consumers using the mail and telephone. The defendants regularly attempt to collect consumer debts alleged to be due another and is a "debt collector" as provided in 15 U.S.C. § 1692a(6).

III. JURISDICTION AND VENUE

4.

This court has subject matter jurisdiction over this Complaint pursuant to FDCPA, 15 U.S.C. § 1692 *et seq.* The venue is proper in any court of competent jurisdiction under 15 U.S.C. § 1692k(d). The court may also exercise supplemental jurisdiction over the related state law claims arising out of the same nucleus of operative facts that give rise to any federal law claims under 28 U.S.C. § 1367.

IV. STATUTORY STRUCTURE

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

5.

The FDCPA was passed to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuse. 15 U.S.C. § 1692.

6.

Under the FDCPA, a “consumer” is any natural person obligated or allegedly obligated to pay any debt. 15 U.S.C. § 1692a(3).

7.

Under the FDCPA, “debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes. 15 U.S.C. § 1692a(5).

8.

Under the FDCPA, a “debt collector” is any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose for which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another. 15 U.S.C. § 1692a(6).

9.

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. 15 U.S.C. § 1692e.

10.

A debt collector may not violate the FDCPA, 15 U.S.C. § 1692f by using unfair or unconscionable means to collect or attempt to collect any debt.

11.

Any debt collector who fails to comply with the provisions of the FDCPA is liable for any actual damages sustained, statutory damages up to \$1,000.00, attorneys' fees as determined by the Court and costs of this action. 15 U.S.C. § 1692k.

12.

The Michigan Collection Practices Act (MCPA), MCLA 445.251 et seq. is an act to regulate the collection practices of certain persons; to provide for the powers and duties of certain state agencies; and to provide penalties and civil fines.

13.

A "Collection agency" means a person directly or indirectly engaged in soliciting a claim for collection or collecting or attempting to collect a claim owed or due or asserted to be owed or due another, or repossessing or attempting to repossess a thing of value owed or due or asserted to be owed or due another person, arising out of an expressed or implied agreement. MCLA 445.251 (1) (b).

14.

A "Consumer" or "debtor" means a natural person obligated or allegedly obligated to pay a debt. MCLA 445.251 (1)(d).

15.

Prohibited acts by debt collectors or collection agencies under MCLA 445.252 include:

- (a) Communicating with a debtor in a misleading or deceptive manner, such as using the stationery of an attorney or credit bureau unless the regulated person is an attorney or is a credit bureau and it is disclosed that it is the collection department of the credit bureau.
- (b) Using forms or instruments which simulate the appearance of judicial process.
- (d) Using forms that may otherwise induce the belief that they have judicial or official sanction.
- (e) Making an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt.
- (f) Misrepresenting in a communication with a debtor 1 or more of the following:
 - (i) The legal status of a legal action being taken or threatened.
 - (ii) The legal rights of the creditor or debtor.
 - (iii) That the nonpayment of a debt will result in the debtor's arrest or imprisonment, or the seizure, garnishment, attachment, or sale of the debtor's property.

- (i) Communicating information relating to a debtor's indebtedness to an employer or an employer's agent unless the communication is specifically authorized in writing by the debtor subsequent to the forwarding of the claim for collection, the communication is in response to an inquiry initiated by the debtor's employer or the employer's agent, or the communication is for the purpose of acquiring location information about the debtor.
- (q) Failing to implement a procedure designed to prevent a violation by an employee.
- (s) Employing a person required to be licensed under article 9 of Act No. 299 of the Public Acts of 1980, being sections 339.901 to 339.916 of the Michigan Compiled Laws, to collect a claim unless that person is licensed under article 9 of Act No. 299 of the Public Acts of 1980.
- (n) Using a harassing, oppressive, or abusive method to collect a debt.

16.

Under The Michigan Collection Practices Act, MCLA 445.257 et seq.(1) A person who suffers injury, loss, or damage, or from whom money was collected by the use of a method, act, or practice in violation of this act may bring an action for damages or other equitable relief.(2) In an action brought pursuant to subsection (1), if the court finds for the petitioner, recovery shall be in the amount of actual damages or \$50.00, whichever is greater. If the court finds that the method, act, or practice was a wilful violation, the court may assess a civil fine of not less than 3 times the actual damages, or \$150.00, whichever is greater, and shall award reasonable attorney's fees and court costs incurred in connection with the action.

V. FACTUAL ALLEGATIONS

17.

Plaintiff has received numerous phone calls from Defendant representatives every day in regards to the collection of an alleged debt.

18.

Defendant continues to call Plaintiff every day even after Plaintiff has repeatedly asked them to stop calling. **Please see attached Exhibit #1.**

19.

Defendant representative, Denise, told Plaintiff that she can go jail on this alleged debt.

20.

Defendant representatives have called Plaintiff's sister at least three times and represented to her that Plaintiff owes an alleged debt.

21.

Defendant representatives also called Plaintiff's mother at least four times and also represented to her that Plaintiff owes an alleged debt.

22.

Defendant representatives have been rude and abusive in their conversations with Plaintiff.

23.

In one conversation with Plaintiff, Defendant representatives even called Plaintiff a liar. **Please see attached Exhibit #1.**

24.

As a result of Defendant's wrongful conduct, Plaintiff has suffered statutory, actual, emotional and financial damages and also seeks her attorney fees and costs under the FDCPA and MCPA.

VI. CAUSES OF ACTION

CLAIM AGAINST DEFENDANT UNDER THE FDCPA

25.

The defendant has violated the FDCPA, 15 U.S.C. § 1692e (10) by the use of false representations and deceptive means in pursuing Plaintiff for a debt that was not validated.

26

The defendant has violated the FDCPA, 15 U.S.C. § 1692e(4) by representing that nonpayment of any debt will result in the imprisonment of any person.

27.

Defendant has violated the FDCPA, 15 U.S.C. § 1692d by engaging in any conduct the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of a debt.

28.

Defendant has violated the FDCPA, 15 U.S.C. § 1692e(5) by threatening to take any action that was not intended to be taken.

29.

Defendant has violated the FDCPA, 15 U.S.C. § 1692e(7) by falsely representing or implying that the consumer committed any crime or other conduct in order to disgrace the consumer.

30.

Defendant has violated the FDCPA, 15 U.S.C. § 1692f by using unfair or unconscionable means to collect or attempt to collect any debt.

31.

Defendant has violated the FDCPA, 15 U.S.C. § 1692b by communicating with any person other than the consumer.

32.

Defendant has violated the FDCPA, 15 U.S.C. § 1692b(2) by communicating with any person other than the consumer and stating that such consumer owes any debt.

33.

Defendant has violated the FDCPA, 15 U.S.C. § 1692b(3) by communicating with any person other than the consumer more than once.

34.

Defendant has violated the FDCPA, 15 U.S.C. § 1692c(b) by communicating, in connection with the collection of any debt, with any person other than the consumer.

35.

Defendant has violated the FDCPA, 15 U.S.C. § 1692d(2) by using language the natural consequence of which is to abuse the hearer.

36.

Defendant has violated the FDCPA, 15 U.S.C. § 1692d(5) by causing a telephone to ring or engaging any person in telephone conversation repeatedly with intent to annoy, abuse, or harass any person at the called number.

37.

As a result of Defendant's wrongful conduct, Plaintiff has suffered statutory, actual, emotional and financial damages and also seeks his attorney fees and costs under the FDCPA.

**CLAIM AGAINST DEFENDANT UNDER THE MCPA
AND THE MICHIGAN OCCUPATIONAL CODE**

38.

Defendant has violated MCLA 445.252 (a) with the use of false representations and deceptive means in its contact of Plaintiff.

39.

Defendant has violated MCLA 445.252(n) by using a harassing, oppressive or abusive method to collect on a debt.

40.

Defendant has violated MCLA 445.252(q) by failing to implement a procedure designed to prevent a violation by an employee.

41.

Defendant has violated MCLA 445.252f(ii) by misrepresenting the legal rights of the debtor.

42.

Defendant has violated MCLA 445.252f(iii) by misrepresenting that the nonpayment of a debt will result in the debtor's imprisonment.

43.

Defendant has violated MCLA 445.252(e) by making an inaccurate, misleading, untrue or deceptive statement or claim in a communication to collect a debt.

44.

Defendant's foregoing acts in attempting to collect this alleged debt against the Plaintiff constitute violations of the Occupational Code, M.C.L. § 339.915 including but not limited to the following:

- a. (n) Using a harassing, oppressive or abusive method to collect a debt.
- b. (f)(iii) That the nonpayment of a debt will result in the debtor's imprisonment.
- c. (q) By failing to implement a procedure designed to prevent a violation by an employee.
- d. (a) By communicating with a debtor in a misleading or deceptive manner.
- e. (e) By making an inaccurate, misleading, untrue or deceptive statement or claim in a communication to collect a debt.
- f. (f)(ii) By misrepresenting the legal rights of the debtor.

45.

As a result of Defendant's wrongful conduct, Plaintiff has suffered statutory, actual, emotional and financial damages and also seeks her attorney fees and costs under the MCPA and the Michigan Occupational Code.

46.

Under MCLA 445.257 et seq., Plaintiff is eligible for equitable relief, triple damages and his attorney fees and costs, and further statutory damages under the act.

47.

As a result of the actions of Defendant, Plaintiff hired the undersigned counsel. Counsel has been an attorney in good standing for almost 13 years and has handled thousands of consumer cases, personally. Counsel is known in his field of a consumer advocate and a competent, experienced consumer trial attorney. As a result, counsel's time is billed at the reasonable rate of \$350.00 an hour.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court grants the following relief against the Defendant:

1. For compensatory damages;
2. For statutory damages;
3. For punitive damages;
4. For attorneys' fees and costs incurred in this action;
5. For Triple Damages under the MCPA, and
5. For such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiff demands a Trial by Jury on all issues.

This 15th day of June, 2007.

Respectfully submitted,



BRIAN P. PARKER (P48617)
Attorney for Plaintiff

EX. #1

AFFIDAVIT OF YANCY DAVIS

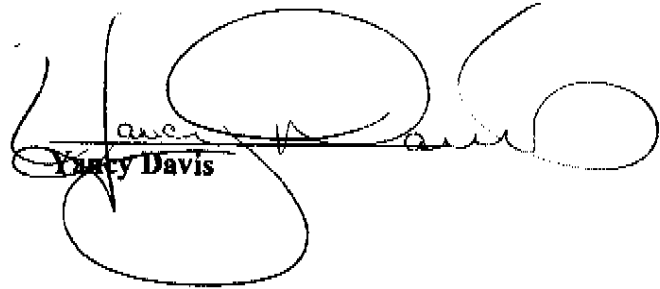
STATE OF MICHIGAN)

COUNTY OF WAYNE)

YANCY DAVIS, being first duly sworn, deposes and says that she is of suitable age and discretion to testify in a Court of law and that she makes this Affidavit based upon personal knowledge and, if called upon to testify, would testify as follows:

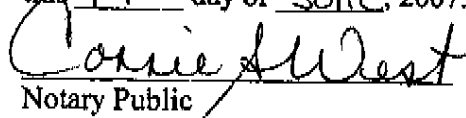
1. **SYSTEMS AND SERVICES TECHNOLOGIES, INC.** is calling and harassing me every day and will not stop calling me.
2. I have asked **SYSTEMS AND SERVICES TECHNOLOGIES, INC.** to stop calling me numerous times and they continue to call every day.
3. Denise, a representative from **SYSTEMS AND SERVICES TECHNOLOGIES, INC.** told me that I can go to jail on this alleged debt.
4. Representatives from **SYSTEMS AND SERVICES TECHNOLOGIES, INC.** have called my sister at least three times on this alleged debt and asked her if I am still driving the car which is the subject of this alleged debt.
5. Representatives from **SYSTEMS AND SERVICES TECHNOLOGIES, INC.** also called my mom at least four times on this alleged debt and asked her also if I was still driving the car which is the subject of this alleged debt.
6. Representatives of **SYSTEMS AND SERVICES TECHNOLOGIES, INC.** have been rude and abusive in my phone conversations with them.
7. Denise from **SYSTEMS AND SERVICES TECHNOLOGIES, INC.** called me a liar in a phone conversation that I had with her.

Further, Deponent saith not.



Nancy Davis

Subscribed and sworn to before me
this 14th day of June, 2007.



Notary Public

CONNIE S. WEST
Notary Public, Wayne County, MI
My Commission Expires Nov. 13, 2008

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

County in which this action arose

Wayne

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Yancy Davis

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

Wayne

(c) Attorney's (Firm Name, Address,

Brian P. Parker (P48617)
30700 Telegraph Road, Suite 1580
Bingham Farms, MI 48025
(248) 642-6268

DEFENDANTS

Systems and Services Technologies, Inc.

Buchanan

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Select One Box Only)

☐ 1 U.S. Government Plaintiff☐ 2 U.S. Government Defendant

☒ Federal Question
(U.S. Government Not a Party)

☐ Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Select One Box for Plaintiff and One Box for Defendant)

Case: 2:07-cv-12572

Assigned To: Cox, Sean F

Referral Judge: Whalen, R. Steven

Filed: 06-15-2007 At 02:30 PM

CMP DAVIS V SYSTEMS AND SERVICES TECHNOLOGIES, INC. (LH)

PTF DEF

☐ 4 ☐ 4☐ 5 ☐ 5☐ 6 ☐ 6

IV. NATURE OF SUIT (Select One Box Only)

CONTRACT

- ☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

PERSONAL INJURY

- ☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury

PERSONAL INJURY

- ☐ 362 Personal Injury - Med. Malpractice
☐ 365 Personal Injury - Product Liability
☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY

- ☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

TORTS

- ☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 R.R. & Truck
☐ 650 Airline Regs.
☐ 660 Occupational Safety/Health
☐ 690 Other

- ☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt. Reporting & Disclosure Act

- ☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

FEDERAL STATUTES

- ☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

FEDERAL RIGHTS

- ☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

FEDERAL SECURITIES

- ☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAXATION

- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES

- ☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 810 Selective Service
☐ 850 Securities/Commodities Exchange
☐ 875 Custom Challenge 19 USC 3410
☐ 890 Other Statutory Actions
☐ 891 Agricultural Acts
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Information Act
☐ 900 Appeal of Fee Determination Under Access to Justice
☐ 950 Constitutionality of State Statutes

V. ORIGIN (Select One Box Only)

☒ 1 Original Proceeding☐ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from another district (Specify)☐ 6 Multidistrict Litigation☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

FDLCPA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

\$ 25,000 +

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

SIGNATURE OF ATTORNEY OF RECORD

DATE: 6-15-07

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

PURSUANT TO LOCAL RULE 83.11

Is this a case that has been previously dismissed?

☐ Yes

☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes

☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes: _____